

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CORY HOCH,

Plaintiff,

v.

STEPHANIE CLENDENIN, et al.,

Defendants.

1:23-cv-00796-KES-SKO

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
AND GRANTING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT

Docs. 27, 33

Plaintiff is a civil detainee proceeding pro se and in forma pauperis in a civil rights action pursuant to 42 U.S.C. § 1983. This matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Plaintiff, who suffers from mobility disabilities, initiated this action on May 24, 2023, alleging defendants violated the ADA, the equal protection clause of the Fourteenth Amendment, and the due process clause of the Fourteenth Amendment by restricting his access to vocational job and education assignments. Doc. 1. The assigned magistrate judge screened the complaint and found that plaintiff had stated a claim. Doc. 9. On September 26, 2024, defendants moved for summary judgment on all of plaintiff's claims. Doc. 27. Plaintiff did not oppose the motion. *See* Docket.

1 Thereafter, on February 20, 2025, the assigned magistrate judge issued findings and
 2 recommendations recommending that defendants' unopposed summary judgment motion be
 3 granted. Doc. 33. Specifically, the magistrate judge found that plaintiff lacks standing to bring
 4 his vocational job claims and his vocational job claims are not ripe because plaintiff has not
 5 suffered an injury in fact, nor is an injury imminent, given plaintiff testified in his deposition that
 6 he had a vocational job in laundry, was happy in his position, was pleased with the
 7 accommodations provided in his current position, and had not applied for nor been denied
 8 employment in any other positions. *Id.* at 7-9. The magistrate judge also found that plaintiff's
 9 claims seeking a vocational education program are moot given plaintiff testified at his deposition
 10 that there is not any vocational educational program in which he wishes to participate but does
 11 not have access, and plaintiff is not entitled to injunctive relief because he has not suffered
 12 irreparable injury. *Id.* at 10.¹

13 Plaintiff's complaint is verified and signed under penalty of perjury. Doc. 1 at 16. It is
 14 therefore properly considered in considering defendants' motion for summary judgment.²
 15 However, contradictions between plaintiff's verified complaint and his testimony given in his
 16 deposition, which was taken subsequently to the filing of his complaint, are insufficient to create
 17 a dispute of fact to survive summary judgment. *Cf. Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d
 18 262, 266 (9th Cir. 1991) (a party "who has been examined at length on deposition" cannot create
 19 _____

20 ¹ The magistrate judge further found that defendants were entitled to summary judgment
 21 regarding plaintiff's claim under the ADA because plaintiff has not been excluded from a job
 22 assignment nor has he been discriminated against by reason of his disability. *Id.* at 12-16.
 23 Finally, the magistrate judge found that defendants were entitled to summary judgment on
 24 plaintiff's equal protection and due process claims, respectively, given that the evidence shows
 25 plaintiff was not denied a job assignment based on his disabilities nor has he suffered any injury
 26 or is he at risk of suffering serious harm. *Id.* at 16-20.

27 ² "[W]hen a nonmoving party is pro se, a court must 'consider as evidence all factual statements
 28 made in motions and pleadings that were based on his personal knowledge, admissible in
 evidence, and attested to under penalty of perjury.'" *Lechner v. LVMPD*, 696 F. Supp. 3d 963,
 978 (D. Nev. 2023) (citing *King of County of L.A.*, 885 F.3d 548, 553 (9th Cir. 2018)). Therefore,
 a "verified complaint may serve as an affidavit for purposes of summary judgment if (1) it is
 based on personal knowledge and if (2) it sets forth the requisite facts with specificity." *Id.*
 (citations omitted).

1 a dispute by later contradicting his testimony in a declaration produced merely to avoid summary
2 judgment).

3 Plaintiff alleges in his verified complaint that defendants do not provide adequate access
4 for disabled individuals to vocational jobs aside from laundry or patient library that other non-
5 disabled patients have access to (such as woodworking or graphic arts) and testified at his
6 deposition that “able-bodied people could basically go anywhere throughout the open part of the
7 hospital [to work] . . . [b]ut there was no extra positions or open positions for the handicapped.”
8 *See generally* Doc. 1; *see also* Hoch Dep. 87:10-24. However, plaintiff also testified
9 unequivocally at his deposition that there are not any job or educational opportunities to which he
10 does not have access but wishes he did. Hoch Dep. 82:21-83:7; 90:20-91:4. He stated the
11 “one[s] [he] would want” are “either the laundry I’m currently in or the library, the patient
12 library.” Hoch Dep. 82:21-83:2. He testified the patient library position is one of the job
13 positions available to disabled patients, but he has not yet applied and wants to stay at his current
14 job for the time being. *See* Hoch Dep. 58:19-59:3-5; 69:2-19. He also testified that there is not
15 any vocational education he wishes he had access to at this time. Hoch Dep. 82:21-83:7. Thus,
16 as found by the magistrate judge, defendants are entitled to summary judgment on all of
17 plaintiff’s claims.

18 In accordance with the provisions of 28 U.S.C. § 636(b)(1), this Court has conducted a de
19 novo review of this case. Having carefully reviewed the file, the Court concludes that the
20 findings and recommendations are supported by the record and proper analysis. The findings and
21 recommendations contained notice that any objections thereto were due within fourteen days. *Id.*
22 at 21. No objections have been filed, and the time to do so has passed.

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1 Accordingly,

- 2 1. The findings and recommendations issued on February 20, 2025, Doc. 33, are
3 ADOPTED in full;
4 2. Defendants' motion for summary judgment, Doc. 27, is GRANTED; and
5 3. The Clerk of the Court is DIRECTED to enter judgment for defendants, terminate all
6 pending motions, and to close this case.

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9 IT IS SO ORDERED.

10 Dated: April 30, 2025


UNITED STATES DISTRICT JUDGE